

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THOMAS A. MYERS,)	
)	
Plaintiff,)	
)	
v.)	No. 1:20-cv-02044-JPH-MPB
)	
MUNCIE CITY POLICE DEPARTMENT,)	
NATHAN SLOAN Chief,)	
JOSH CARRINGTON Officer,)	
DANIELLE BRADFORD Officer,)	
JOHN HENDERSON Officer,)	
)	
Defendants.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Magistrate Judge Matthew Brookman has entered a Report and Recommendation, dkt. 44, recommending that the Court grant in part and deny in part Defendants' motion for judgment on the pleadings, dkt. 32. The parties have had the opportunity to object but have not done so. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1). The Court has considered and now **ADOPTS** the Report and Recommendation. Dkt. [44]. The motion for judgment on the pleadings, dkt. [32] is **GRANTED in part and DENIED in part** as follows:

- Plaintiff's extortion claim, vicarious liability claim against Chief Sloan and/or the City, claims under the Indiana Constitution, claim under the Ninth Amendment, and general claim under 42 U.S.C. § 1983 are **DISMISSED with prejudice**. Defendant Muncie


City Police Department is **DISMISSED with prejudice**; the **clerk shall remove** it as a defendant on the docket.

- Plaintiff's *Monell* claim against Chief Sloan and/or the City; failure to intervene claim (excessive force) against Officers Carrington and Bradford; failure to intervene claim (arrest/detention) against all defendants; Fourth, Sixth, Eighth, and Fourteenth Amendment claims; and state law tort claims against the officers in their individual capacities and against Chief Sloan in his official capacity are **DISMISSED without prejudice**.
- The motion for judgment on the pleadings is **DENIED** only as to Plaintiff's failure to intervene claim (excessive force) against Officer Henderson. That is the only remaining claim.

Any motion to amend the complaint **must be filed by July 16, 2021**. If no motion to amend is filed, Plaintiff's failure to intervene claim (excessive force) against Officer Henderson will proceed and all other claims will be dismissed with prejudice. *See Bausch v. Stryker Corp.*, 630 F.3d 546, 562 (7th Cir. 2010).

SO ORDERED.

Date: 6/29/2021


James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

THOMAS A. MYERS
2013 Lazycreek
Muncie, IN 47302

Tia J. Combs
FREEMAN MATHIS & GARY, LLP
tcombs@fmglaw.com

Casey C. Stansbury
FREEMAN MATHIS & GARY, LLP
cstansbury@fmglaw.com

Caitlin McQueen Tubbesing
FREEMAN MATHIS & GARY, LLP
ctubbesing@fmglaw.com